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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,850	11/03/2006	Trifon Kiratzidis	1941/193	5139
2101 7590 09/09/2009 Sunstein Kann Murphy & Timbers LLP 125 SUMMER STREET BOSTON, MA 02110-1618				
EXAMINER				
CHU, MICHAEL ALEXANDER				
ART UNIT		PAPER NUMBER		
3766				
MAIL DATE		DELIVERY MODE		
09/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,850

Applicant(s)

KIRATZIDIS, TRIFON

Examiner

MICHAEL CHU

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 1/16/2007
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Drawings

Figures 1-5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

1. Claim 2 is objected to because of the following informalities: Claim 2 recites "Speech processor" in line 1 and "the speech processor" in line 2. It appears that applicant is intending to refer back to the electronic processor of claim 1. Appropriate correction is required.
2. Claim 3 line 2 recites the limitation "may form the fixing hook". A broad range or limitation followed by linking terms (e.g., preferably, maybe, for instance, especially) and a narrow range or limitation within the broad range or limitation is considered indefinite

since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman (US Patent 5824022).

In regards to independent claim 1, Zilberman discloses a behind-the-ear ("BTE" column 2 line 25) speech processor for cochlear implant systems, whose characteristic feature is the fact that it constitutes a single mechanical unit (Column 3 line 60 -65) more specifically, all functional parts comprise the microphone 38 (Figure 3A and column 5 line 26-27), the electronic processor 102 (Figure 5), the inductive transmission coil 104 (Figure 5), the fixing magnet (Column 1 line 64), the batteries or accumulators 107 (Figure 5), the control buttons and switches 40-46 (Figure 5) and the embedded fixing hook 32 (Figure 2), that overall constitute a system. However Zilberman does not expressly disclose use of a magnet, an external connection socket and all components within a single housing without any mobile parts.

With respect to the magnet, Zilberman both discloses use of a magnet within the prior art (Column 1 line 64-67) and states that the system can be used with an internal magnet (Column 7 line 20-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zilberman's device by incorporating a magnet in order to provide more secure attachment of the behind the ear unit to prevent damage of the device resulting from detachment from the user.

With respect to the external connection socket, Zilberman discloses wireless connection in lieu of an external connection socket for connection between a remote unit and the behind the ear unit. Examiner takes official notice that wired and wireless connections in cochlear implants are well known means of communication between separate components and housings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zilberman's device by incorporating an external socket for the purpose of providing additional means of communication between the remote unit and the behind the ear unit in order to safeguard/maintain communication in the event of excessive wireless interference or failure.

In respect to a single housing without any mobile parts, Zilberman discloses the claimed invention except for the coil and the magnet contained within a single

housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the components within a single housing, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Alternatively, Zilberman presents clear motivation for reduction of the number of external parts within the cochlear implant system (Column 2 line 14-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zilberman's device by incorporating all the external parts within a single housing for the purpose of providing a more compact and convenient external unit.

In regards to claim 2, as best understood, separate construction of individual components followed by combining components together is a well known method for construction of medical devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the fixing hook and the speech processor separately in order to allow for specialized construction of both components prior to integration.

In regards to claim 3, Zilberman discloses a fixing hook (see claim 1) that is capable of functioning as sunglass or eyeglass hooks.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman (US Patent 5824022) in view of O'Brien (US Pub 20040202339).

In regards to claim 3, Zilberman does not expressly disclose further characterised by the fact that eyeglass or sunglass hooks may form the fixing hook. O'Brien teaches a hearing system characterized by the fact that eyeglass or sunglass hooks may form the fixing hook (Figure 16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zilberman's device by utilizing the fixing hooks as eyeglass or sunglass hooks, based on the teachings of O'Brien, for the purpose of providing additional securing means for the BTE for individuals who wear glasses.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL CHU whose telephone number is (571)270-1467. The examiner can normally be reached on Monday through Friday, 8:00 a.m. – 5:00 p.m., EST. Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MICHAEL CHU/
Examiner, Art Unit 3766

/Carl H. Layno/
Supervisory Patent Examiner, Art
Unit 3766